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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/186,817	11/05/1998	MARK RAPAICH	450.183US1	2299
24333	7590	12/08/2005	EXAMINER	
GATEWAY, INC. ATTN: SCOTT CHARLES RICHARDSON 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			LAO, LUN S	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/186,817	Applicant(s) RAPACH, MARK	
	Examiner Lun-See Lao	Art Unit 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): Rejection of claim 16 under 112/1st.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


HUYEN LE
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Regarding applicant's argument that Cooper and Thagard do not teach a personal computer system (Remarks, page 7, line 1 – page 8, line 7), the examiner's response is as follows. First, in each of the independent claims, the recitation of "personal computer" (claims 9, 11, 13) / "personal computer system" (claims 1, 2, 12) only occurs in the preamble, which has not been given patentable weight. A preamble is generally not accorded any patentable weight where the body of the claim does not depend on the preamble for completeness. See *Kropa v. Robie*, 88 USPQ at 480-481; *Rowe*, 42 USPQ2d at 1553; and *IMS Technology Inc. v. Haas Automation Inc.*, 54 USPQ2d 1129, 1137 (Fed. Cir. 2000). In each of the instant independent claims, the body of the claim following the preamble is a self-contained description of the structure/process which does not depend on the "personal computer" / "personal computer system" of the preamble for completeness. In other words, the "personal computer" / "personal computer system" in the preamble does not limit the respective claims. Second, as clearly stated by applicant in the response filed 11/15/2005, page 6, 1st paragraph, "nearly all computers have internal speakers which receive analog signals converted from a D/A converter". Admittedly, placing conversion and routing functionality in a personal computer is conventional. Therefore, applicant's argument is not persuasive. As to applicant's argument regarding routing digital audio signals to a selected D-to-A converter based on a desired converter quality (remarks, page 8, line 8 – page 10, line 4), applicant argued the references individually. However, it is the combination of Cooper and Thagard that meet the claimed/argued limitation. Cooper teaches routing digital audio signals to a selected (matched) D-to-A converter in that each input 13-1 ... 13-N is routed to the matching converter 10-1 ... 10-N (fig. 4, col. 4, line 58 – col. 5, line 11), and Thagard teaches that a selected (matched) D-to-A converter is characterized by its desired quality (corresponding sampling rates, see final rejection of claim 1 with respect to Thagard). When the teachings of Cooper and Thagard are combined, digital audio signal(s) would have been routed to a selected/matched D-to-A converter, which would have been based on the corresponding desired converter quality. When the teachings of Cooper and Thagard are combined, the teaching of quality/sample_rate is applied to each of the signal sources. As to applicant's argument regarding Heyl (remarks, pages 10-11), note discussion of "personal computer" / "personal computer system" above. Further, as admitted by applicant, an audio codec is part of the PC (remarks, page 10, 3rd paragraph). As to applicant's argument regarding Van Ryzin (remarks, page 11, last paragraph), Van Ryzin is not relied on to teach selecting D/A converter based on desired converter quality, which is met by the combination of Cooper and Thagard, as discussed above. For these reasons, applicant's arguments are not persuasive.


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